

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Dennis L. Macklin,

Complainant,
vs.

Sean Nienow,

Respondent.

ORDER FINDING
NO PRIMA FACIE VIOLATION AND
DISMISSING COMPLAINT

On May 10, 2010, Dennis L. Macklin filed a Complaint with the Office of Administrative Hearings alleging Sean Nienow, a non-incumbent candidate for State Senate District 17, violated Minn. Stat. § 211B.06 by using the terms “reelect” and “your state senator” in his campaign material.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on May 10, 2010, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail on May 10, 2010.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state a prima facie violation of Minn. Stat. § 211B.06.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Dennis Macklin against Sean Nienow is DISMISSED.

Dated: May 12, 2010

s/Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § 14.63 to 14.69.

MEMORANDUM

Respondent Sean Nienow served one term (2003-2007) as State Senator for District 17. He was defeated for re-election in 2006 and is now seeking reelection in the general election in November 2010. According to the Complaint, Respondent has disseminated campaign material and merchandise that states "Re-elect Senator Sean Nienow," and "Sean Nienow Your State Senator." The Complaint alleges that Respondent's use of the terms "re-elect" and "your state senator" violates Minn. Stat. § 211B.06. According to the Complainant, only incumbents may use the term "reelect."

Minn. Stat. § 211B.03 specifically governs the use of the word "reelect" in campaign material. It provides as follows:

A person or candidate may not, *in the event of redistricting*, use the term "reelect" in a campaign for elective office unless the candidate is the incumbent of that office and the office represents any part of the new district. [Emphasis supplied.]

By its terms Minn. Stat. § 211B.03 only prohibits the use of the term "reelect" by candidates for offices in new districts that have been created as a result of redistricting. It does not prohibit or restrict the use of the term "reelect" by candidates for any other offices or in any other situations.

The Complaint alleges that Mr. Anderson's use of the term "reelect" violates Minn. Stat. § 211B.06, subd. 1, which provides:

A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

The Complaint alleges that because Mr. Anderson is not the incumbent, his use of the term "reelect" with respect to his candidacy for office in the current election, is a false statement within the meaning of Minn. Stat. § 211B.06.

The dictionary defines “reelect” simply as “to elect again.”¹ Although the word “reelect” is typically used to refer to a person who currently holds the office, the definition is broad enough to refer both to the incumbent and to a person who once held the office, left the office, and later seeks election to that office again. Because Respondent once held the office, his use of the word “reelect” on his campaign material does not render the material false within the meaning of Minn. Stat. § 211B.06. There is nothing false about Respondent asking voters to “re-elect” him (or elect him again) to his former Senate seat. The Minnesota Supreme Court has observed that the statute is “directed against the evil of making false statements of fact.”² It does not prohibit inferences or implications, even if misleading. In the ALJ’s view, Nienow’s use of the word “re-elect” in his campaign material is sufficiently ambiguous to make that statement something less than “clearly false” and therefore not actionable.³

Likewise, the phrase “your state senator” is not factually false within the meaning of § 211B.06. The statement that must be proved false is not necessarily the literal phrase published but rather what a reasonable reader would have understood the author to have said.⁴ Here, reasonable readers would not understand Respondent to be holding himself out as their current state senator. Rather, it is clear that Respondent’s signage and merchandise is campaign material and that Respondent is running for the position of state senator.⁵ The phrase “Sean Nienow Your State Senator” is not a false statement of fact.

The Administrative Law Judge concludes that the Complainant has failed to state a prima facie violation of Minn. Stat. § 211B.06. The Complaint is therefore dismissed.

B. H. J.

¹ See MERRIAM-WEBSTER ONLINE DICTIONARY (2010 ed.) and AMERICAN HERITAGE DICTIONARY (2nd ed. 1991).

² *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981).

³ See *Maloney v. Oman*, OAH Docket No. 4-6349-17443-CV, Aug. 11, 2006 (dismissing the allegation that respondent violated § 211B.06 by using the term “re-elect” in his campaign posters to imply that he was the current county attorney); *Maloney v. Anderson*, OAH Docket No. 3-0320-17444-CV, Aug. 11, 2006 (dismissing the allegation that respondent violated § 211B.06 by using the term “re-elect” in his campaign material to imply that he was the current state representative).

⁴ *Jadwin v. Minneapolis Star and Tribune*, 390 N.W.2d 437, 441 (Minn. App. 1986), citing *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970); see also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996).

⁵ See *Behrens v. Will Rossbach & Committee*, OAH Docket No. 12-6361-17183-CV, Mar. 24, 2006 (dismissing allegation that the statement “Will Rossbach Mayor of Maplewood” violated § 211B.06 by falsely implying that candidate was the current mayor), citing *Miske v. Benedict*, 259 N.W. 18, (Minn. 1935); see also *Hauer v. Katch*, OAH Docket No. 8-0325-20710-CV, Aug. 3, 2009, (dismissing allegation that “Michael J. Katch Mpls City Council” violated § 211B.06 by falsely implying that candidate was a current city council member).